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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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Noel Tenorio

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i2 TECHNOLOGIES US, INC.
11701 LUNA ROAD
DALLAS, TX 75234

EXAMINER

CHANDLER, SARA M

ART UNIT

PAPER NUMBER

3693

NOTIFICATION DATE

DELIVERY MODE

09/22/2009

ELECTRONIC

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

candy_sanders@i2.com
steven@boothudall.com

<p align="center">Advisory Action Before the Filing of an Appeal Brief</p>	<p>Application No. 09/970,371</p>	<p>Applicant(s) TENORIO, NOEL</p>	
	<p>Examiner SARA CHANDLER</p>	<p>Art Unit 3693</p>	

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 08 September 2009 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☐ The period for reply expires _____ months from the mailing date of the final rejection.
b) ☒ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
(a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);
(b) ☐ They raise the issue of new matter (see NOTE below);
(c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☐ Applicant's reply has overcome the following rejection(s): _____.
6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☒ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☒ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
The status of the claim(s) is (or will be) as follows:
Claim(s) allowed: _____.
Claim(s) objected to: _____.
Claim(s) rejected: 30-53.
Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:
See Continuation Sheet.
12. ☐ Note the attached Information *Disclosure Statement*(s). (PTO/SB/08) Paper No(s). _____
13. ☐ Other: _____.

/JAGDISH N PATEL/
Primary Examiner, Art Unit 3693

Continuation of 11. does NOT place the application in condition for allowance because: Objections - The objections of claims withdrawn. 101- Software per se rejection would be withdrawn however, applicant would need to overcome objection/rejection based on the language by incorporating language indicating the use of executable code or instructions with respect to computer readable medium claims. 112- Means for rejection withdrawn. Rejection regarding the interoperability of components (i.e., databases, server, seller and buyer computers) maintained. 103 Rejection maintained.

Claims rendered obvious in light of Moshal based on each of the following rationales

(a) Official Notice Official Notice is taken that it was old and well-known at the time of the invention to provide a buyer request display comprising one or more patterns representing the buyer request, the one or more patterns of the buyer request comprising a plurality of bars, each bar representing a particular buyer offer variable and comprising a set of one or more geometric display elements, wherein the buyer computer encodes the value of the particular one of the plurality of buyer offer variables, according to a predefined encoding scheme; and an offers display of the one or more offers, the offers display comprising a plurality of patterns, each pattern of the plurality of patterns representing a particular one of the one or more offers and comprising a plurality of bars, each bar representing a particular one of the plurality of seller offer variables and comprising a set of one or more geometric display elements, wherein the buyer computer encodes the value of the particular one of the plurality of seller offer variables, according to the predefined encoding scheme; Examiner notes, that the display represents a user interface. It was old and well-known at the time of the invention that a user interface provides for the presentation of information to the users and the capture of their inputs.

Documentary Evidence:

"Microsoft Press Computer Dictionary Third Edition," editor: Kim Fryer. Copyright 1997 by Microsoft Corporation. Pg. 488;

Pearson Education. Copyright 2001 by Addison-Wesley. Pg. 11; and

Free On-line Dictionary of Computing. Copyright 1993-2007 Denis Howe.

Examiner further notes, that it was old and well-known at the time of the invention to manipulate the presentation of the information in a variety of ways in accordance with the preferences of a particular user. These presentations included the use of patterns incorporating bars, columns, grids etc. For example, Excel programs have been used frequently in reports, slide shows and presentations to show diagrams in the form of bars, lines and other visual forms.

Documentary Evidence:

"Mastering Excel 4 For Windows," by Carl Townsend. Copyright 1992 by Sybex. Chapter 20, pgs. 423-454.;

Levine, US Pub. No. 2002/0178105 - Fig. 6 ;

Lee, US Pub. No. 2002/0065762 - Figs. 5-14; [0030] [0056]; and

Russell, US Pat. No. 7,020,630 - Fig. 8

See also MPEP § 2144.03.

(b) Design Choice

Design choice is a conclusion reached by the Examiner regarding the difference between the claims and the prior art. This conclusion is based on a two prong test involving an analysis of the totality of the record including applicants own specification, and an analysis of whether the prior art would perform equally as well as the claimed subject matter.

A rejection based on design choice does not require that a reference expressly or even impliedly teach the difference between the claims and the prior art.

Applicant provides the following in the Specification:

Business transactions are increasingly taking place over the Internet and other electronic communication networks. Electronic markets may provide a forum for such transactions, allowing buyers to locate sellers, and vice versa. This process may involve a buyer (or seller) identifying one or more suitable offers to sell (or buy) from one or more sellers (or buyers). However, it may be difficult for a buyer (or seller) to identify suitable offers to sell (or buy) from among the offers available to the buyer (or seller) for a number of reasons. For example, there may be a relatively large amount of information for a buyer (or seller) to consider when trying to identify suitable offers to sell. The market may include a relatively large number of offers. Offers may include a number of variables, and there may be a relatively large number of possible values for each variable. Additionally, there may be no available offers providing a substantial match with a particular order from the buyer (or seller). The buyer (or seller) may therefore have to determine which of the available offers provide a relatively close match with that order, taking into account a number of offer variables and possibly the relative priorities of such variables.

Applicant' Specification, pg. 2 (10/02/01).

What is not made apparent from the record however, is how the particular visual patterns of the claimed invention resolves any problem, provides any advantage or is used for any purpose above and beyond what the visual patterns of the prior art can do equally well.

The visual patterns of Moshal perform equally well at identifying suitable offers to sell (or buy) for the offers available to the buyer (or seller); and enabling the buyer (or seller) to discern which offers prove the closest match to a particular order. That is, factors such as whether it is a offer, user request or order is distinguished; the price; the size; whether a user is a buyer or seller, the length of time a user has been in the marketplace; whether orders and offers are close to a match or consummating a transaction etc. are readily apparent from the visual pattern of Moshal. See Moshal, abstract, Figs. 1-18; [0001] – [0047]).

Examiner notes, whether presented as circles, bars, stars or any other visual pattern, the same problem could be resolved, the same advantage achieved, and purpose addressed. The fact that Applicant provides a pattern comprising a plurality of bars, each bar representing a particular offer variable is not the basis for a patentability determination. If that were the case, an infinite number of patents could be issued representing the offer and the offer variables as lines, or arrows or any other symbol and none would be any less obvious in light of Moshal.

See also In re Kuhle, 526 F.2d 553, 555, 188 USPQ 7, 9 (CCPA 1975)

(c) Nonfunctional Descriptive Material

Certain types of descriptive material, such as music, literature, art, photographs, and mere arrangements or compilations of facts or data, without any functional interrelationship is not a process, machine, manufacture, or composition of matter. See MPEP § 2106.01.

Examiner notes that, “a buyer request display comprising one or more patterns representing the buyer request, the one or more patterns of the buyer request comprising a plurality of bars, each bar representing a particular buyer offer variable and comprising a set of one or more geometric display elements, wherein the buyer computer encodes the value of the particular one of the plurality of buyer offer variables, according to a predefined encoding scheme; and an offers display of the one or more offers, the offers display comprising a plurality of patterns, each pattern of the plurality of patterns representing a particular one of the one or more offers and comprising a plurality of bars, each bar representing a particular one of the plurality of seller offer variables and comprising a set of one or more geometric display elements, wherein the buyer computer encodes the value of the particular one of the plurality of seller offer variables, according to the predefined encoding scheme,” is interpreted as a compilation or mere arrangement of data. The visual pattern of the data does not provide a functional interrelationship, and is considered to be non-functional descriptive material and not entitled to patentable weight.

See also *In re Gulack*, 217 USPQ 401 (Fed. Cir. 1983).

Thus, based on any of the above rationales, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the teachings of Moshal to provide a buyer request display comprising one or more patterns representing the buyer request, the one or more patterns of the buyer request comprising a plurality of bars, each bar representing a particular buyer offer variable and comprising a set of one or more geometric display elements, wherein the buyer computer encodes the value of the particular one of the plurality of buyer offer variables, according to a predefined encoding scheme; and an offers display of the one or more offers, the offers display comprising a plurality of patterns, each pattern of the plurality of patterns representing a particular one of the one or more offers and comprising a plurality of bars, each bar representing a particular one of the plurality of seller offer variables and comprising a set of one or more geometric display elements, wherein the buyer computer encodes the value of the particular one of the plurality of seller offer variables, according to the predefined encoding scheme;

As suggested by Moshal, users should have access to an easily understandable version of a the current state of critical data and any objects other than circles could be used to represent the buyers and sellers (and inherently, there respective offers also). (Moshal, abstract, [0003] [0006] [0027]).

The claimed invention uses a known technique to improve a similar device in the same way; applies a known technique to a known device ready for improvement to yield predictable results; and known work in one field of endeavor may prompt variations of it for use in either the same field or a different one based on design incentives or other market forces if the variations are predictable to one of ordinary skill in the art. Thus, the claimed subject matter likely would have been obvious under KSR. *KSR*, 127 S.Ct. at 1741, 82 USPQ2d at 1396.